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Boards of Education - Employees, Employers, Employment - Public Records - Investigations - Names

Discussion of information available to the public under the Alabama Open Records Act.

Dear Ms. Aune:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION NUMBER ONE

On request by the media or public, is the Board required by law to provide the following information:

(a) The specific salary expenditure account from which individual employees are paid.

(b) The race of the employee.

(c) The marital status of the employee.

(d) The current assignment of the employee.

(e) The rank and type of teaching certificate the employee holds.

(f) The employee's employment experience record.

(g) A copy of the employee's gross salary.

(h) The amount of the employee's gross salary.

(i) Areas of endorsement held by teachers.

(j) The sex of the employee.

(k) All documents on file in the employee's personnel file, including applications for employment, the employee's medical history, disciplinary actions, memos of reprimand, confidential recommendations for employment, drug or alcohol testing results.

(l) The date the employee was hired.

(m) The date the employee attained tenure.

(n) The names of all teachers or administrators who are being recommended for transfer of assignment.

(o) The names of employees who are being recommended for termination of contract or other disciplinary action.

FACTS, ANALYSIS AND CONCLUSION

The answers to the questions posed are based on consideration of the Alabama Open Records Act, § 36-12-4, et seq., and cases decided pursuant thereto. In Stone v. Consolidated Pub. Co., 404 So.2d 678 (Ala. 1981), the Alabama Supreme Court examined the requirements of Ala. Code, § 36-12-40 (1975), and determined:

"We have carefully considered the issue raised by appellants on this appeal, particularly with reference to our statutes. Construing these statutes in pari materia, we hold that the public writing spoken of in Code 1975, § 36-12-40, is such a record as is reasonably necessary to record the business and activities required to be done or carried on by a public officer so that the status and condition of such business and activities can be known by our citizens. The news media are clearly appropriate vehicles by which citizens can learn about the activities and business conducted by our public officers. This is not to say, however, that any time a public official keeps a record, though not required by law, it falls within the purview of § 36-12-40. McMahan v. Trustees of the University of Arkansas, 255 Ark. 108, 499 S.W.2d 56 (1973). It would be helpful for the legislative department to provide the limitations by statute as some states have done. Absent legislative action, however, the judiciary done. Absent legislative action, however, the judiciary must apply the rule of reason. State v. Alarid, 90 N.M. 790, 568 P.2d 1236 (1977). Recorded information received by a public officer in confidence, sensitive personnel records, pending criminal investigations, and records the disclosure of which would be detrimental to the best interests of the public are some of the areas which may not be subject to public disclosure. Courts must balance the interest of the citizens in knowing what their public officers are doing in the discharge of public duties against the interest of the general public in having the business of government carried on efficiently and without undue interference. MacEwan v. Holm, 226 Or. 27, 359 P.2d 413 (1961)." Stone v. Consolidated Pub. Co., Ala. 404 So.2d 678.

There is a presumption of required disclosure, and ". . . the exceptions as set forth in Stone must be strictly construed." Chambers v. Birmingham News Co., 552 So.2d 854, 856 (Ala. 1989). With these considerations in mind, it is apparent most of the information listed in Question 1 constitutes public information. More specifically, the information listed in subquestions a-b; d-j; and l-m is information relative to the business of providing educational services to the residents of Mobile County, and is therefore information subject to disclosure. See Opinion of the Attorney General to Chancellor Charles L. Payne, dated December 16, 1987, A.G. No. 88-00079. The marital status of an employee, however, is information more personal than public, and is therefore not subject to disclosure. See Blankenship v. City of Hoover, 590 So.2d 245, 250 (Ala. 1991).

Subquestion k lists information which may be found in an employee's personnel file, and therefore requires closer analysis. In general, applications, disciplinary actions, and memoranda of reprimand are documents reasonably necessary to conduct business, and thus subject to disclosure, although the documents do not need to be released in a particular form requested, i.e., on diskette, compiled in a particular manner, etc. See Chambers v. Birmingham News, supra; Opinion to Chancellor Charles L. Payne, supra. An employee's medical history, confidential recommendations for employment, and drug or alcohol testing results will, in most cases, fall under the sensitive personnel records exception set out in Stone, supra. When such information is requested, the party refusing to disclose should remember it has the burden of proving the information requested falls within an exception to the Open Records Act. Chambers v. Birmingham News, supra.

The two remaining subquestions of Question 1 pertain to names of persons being recommended by the superintendent for transfer or disciplinary action, including the termination of a contract. The employing board of education actually makes these kinds of decisions, after the superintendent has made his or her recommendation. Ala. Code, § 16-9-23 (1975). These recommendations are part of the superintendent's thought processes, and fall within the Stone exceptions, and are not subject to disclosure until they are acted upon by the Board. Mobile Press Register v. Jordan, et al., CV 95-1593 (Cir. Ct. Mobile Co. 1995).

QUESTION NUMBER TWO

If an internal investigation of employee is conducted:

(a) Does the employee have the right to obtain a copy of the report of the investigation where the basis for the investigation was an allegation of child abuse, and where the report contains the names and statements of a student or students or, are such reports confidential under the Child Abuse statutes and regulations, to be released only by the State Department of Human Resources or law enforcement?

(b) Does the employee have a right to obtain a copy of the report of the investigation where the basis for the investigation was an allegation of sexual harassment by other employees, and where the report contains the names and statements of the employees?

(c) If such reports must be released, at what point must they be released?

(d) Is there a legal obligation to release such reports prior to a determination being made by the superintendent to pursue disciplinary action?

(e) Can such reports be withheld until the discovery phase of due process in the course of termination or other disciplinary action?

(f) If the administration determines that the allegations are unfounded, can the report be withheld?

FACTS, ANALYSIS AND CONCLUSION

Question 2 contains several subquestions pertaining to the rights of an employee when a local board of education

conducts an internal investigation regarding allegations made against that employee. The circumstances surrounding such internal investigations, and any actions the board may wish to take as a result of the investigations, are usually very fact-specific, and it is impossible to formulate guidelines which will protect the local board of education without these facts. In general, if the board intends to take adverse action against the employee as a result of the investigation, the employee must be afforded his rights under the Fourteenth Amendment to the United States Constitution, as well as any requirements set out in applicable state laws. In addition to complying with procedural due process, it is important to determine whether an employee's liberty interest is affected by the use and/or retention of such reports. The Eleventh Circuit Court of Appeals has held that a person has been deprived of a liberty interest when ". . . (1) a false statement (2) of a stigmatizing nature (3) attending a government employees discharge (4) made public (5) by the governmental employer (6) without a meaningful opportunity for employee name clearing." Buxton v. City of Plant City, Fla., 871 F.2d 1037, 1042 (11th Cir. 1989).

QUESTION NUMBER THREE

(a) Does the Board have legal authority to require all employees to provide their home addresses and home telephone numbers for internal use only?

(b) Does the Board have legal authority to require all employees to provide their home addresses and home telephone numbers for release to the public?

(c) If the information is collected, is it then public information?

(d) Does the Board have legal authority to sell employee directories that contain the names, addresses, school assignments, and home phone numbers of all employees? May the information be released to the public only with the consent of the employees?

FACTS, ANALYSIS AND CONCLUSION

(a) The Board has legal authority to require its employees to provide their home addresses and home telephone numbers for internal use only. It is reasonable for the Board to require the employee to provide such information so that the employee may be contacted to conduct business outside of the ordinary school day, in the event of an emergency, etc.

(b) The Board does not have the right to require employees to provide home telephone numbers and home addresses for release to the public, because such publication is not necessary for the day-to-day operations of a school system. Neither federal nor state law prohibits the voluntary compilation of such information. See generally Opinion of the Attorney General to Honorable Roy W. Johnson, Jr., dated October 29, 1985, A.G. No. 86-00036.

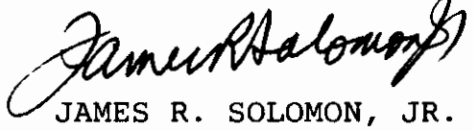
(c) The collection of home addresses and home telephone numbers of employees does not necessarily make such information public. If the information is collected for internal use only, then it is not public.

(d) The Board may sell employee directories to the public, when the employees have consented to publication.

I hope this sufficiently answers your questions. If our office can be of further assistance, please contact James R. Solomon, Jr., of my staff.

Sincerely,

JEFF SESSIONS
Attorney General
By:



JAMES R. SOLOMON, JR.
Chief, Opinions Division

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